IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9889 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MANJUSHRI TEXTILES

Versus

SHANKARBHAI KALABHAI

Appearance:

1. Special Civil Application No. 9889 of 1992

MR KN RAVAL for Petitioner No. 1

MS PJ DAVAWALA for Petitioner No. 1

MR UA TRIVEDI for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 09/04/2002

ORAL JUDGEMENT

Heard Ms.P.J.Dawawala, learned advocate appearing on behalf of the petitioner and Mr.U.M.Trivedi, learned advocate for respondent workman.

The petitioner has challenged the order passed by

the Labour Court, Ahmedabad in Recovery application No.2963 / 1986 dated 29th June, 1992, whereby the labour court has granted retrenchment compensation of Rs.28396.80 ps in favour of the respondent workman. At the time, when this Court has issued RULE on date 23rd February, 1993, the Division Bench of this Court has passed the following order:

"Rule. As regards interim relief, the order passed by the Labour Court is stayed on condition that the amount ordered to be paid to the respondent workman shall be deposited by the petitioner in the Labour Court, Ahmedabad on or before March 31, 1993. As and when the amount is deposited, 50 % [fifty per cent] of the amount deposited shall be permitted to be withdrawn by the workman without furnishing surety and the balance 50 per cent shall be permitted to be withdrawn on furnishing security to the satisfaction of the Labour Court. If the amount is not deposited by the aforesaid date, it shall carry interest at the rate of 15 % [fifteen per cent] till the amount is deposited and in this eventuality, it will also open to the respondent workman to enforce the order as if the interim relief granted herein has stood vacated."

Learned advocate Ms.Dawawala on behalf of the petitioner has submitted that the labour court has committed gross error in granting said benefits in favour of the respondent workman.

However, learned advocate Mr.Umesh Trivedi for respondent workman has submitted that pursuant to the interim order passed by this Court, the respondent workman has already withdrawn the total amount which was deposited by the petitioner before the Labour Court. It is further submitted that the respondent workman had filed Recovery Application under Section 33[C] [2] of the I.D.Act against the employer claiming retrenchment compensation of Rs.28,396.80 ps at the rate of Rs.37.12 ps per day and further submitted that respondent workman had joined with the petitioner on 23rd December, 1973. It is further submitted that considering the agreement arrived at between the petitioner and the recognised Union on 23rd December, 1985, the respondent workman has tendered resignation as per the agreement and his resignation was sanctioned by the petitioner on 20th June, 1986 and gratuity amount of Rs.21,936/- has been paid by the petitioner but retrenchment compensation for the period from 27th December, 1973 to 12th June, 1984 was not paid to the respondent workman. Therefore, retrenchment compensation has been calculated on the

basis of 15 days per year which comes to Rs.28,396.80 ps. However, before the labour court, the petitioner has filed reply denying the averments made in the application. It was contention raised by the petitioner before the labour court that the respondent workman was working with effect from 27th December, 1973 and he was retired on 17th June, 1984 and therefore, he is not entitled to retrenchment compensation from the petitioner. Thereafter, the respondent workman was examined and the workman produced vide Exh.8 the pay slip of April, 1984 and Exh.9 a copy of Majoor Sandesh dated 15th February, 1986. Thereafter, oral evidence was led at Exh.11, so also, the copy of the check was produced at Exh.18 by the respondent workman showing that the amount has been paid by the petitioner towards gratuity to the respondent workman. The petitioner has produced vide Exh.12 a copy of the resignation given by the respondent workman which was demanded by the respondent vide Exh.6. Thereafter, vide Exh.16 is the copy of the P.F. Nomination form and thus, considering all the material on record, the labour court has considered the merits of the matter. The labour court has come to the conclusion that when resignation was tendered by the respondent workman and the same was sanctioned by the petitioner, therefore, the petitioner is entitled to amount of retrenchment compensation as claimed in the said application.

I have perused the order passed by the labour court. In pursuance of the agreement with TLA and the petitioner, resignation was given by the respondent workman which was sanctioned by the petitioner and therefore, the respondent workman is entitled mount of retrenchment compensation for the period from the date of joining till the date of resignation and therefore, the labour court has rightly granted the retrenchment compensation in favour of the respondent workman. The labour court has not committed any error while passing the order under challenge and as such, there seems no jurisdictional error or procedural irregularity committed by the labour court. Moreover, considering the fact that now the entire amount has been withdrawn by the respondent workman, therefore, according to my opinion, there is no substance in this petition which requires rejection.

Therefore, present petition is rejected accordingly. Rule discharged. Ad-interim relief, if any, stands vacated. No order as to costs.

Date : 9-4-2002 [H.K.Rathod, J.]

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